



**ENVIRONMENTAL PROTECTION AGENCY**

**40 CFR Part 52**

**[EPA-R03-OAR-2011-0730; FRL- 9487-5]**

**Approval and Promulgation of Air Quality Implementation Plans; Virginia;  
Consumer and Commercial Products**

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Proposed rule.

**SUMMARY:** EPA is proposing to approve a State Implementation Plan (SIP) revision submitted by the Commonwealth of Virginia. The SIP revision adds a new chapter (9VAC5-45 – Consumer and Commercial Products) in order to control volatile organic compounds (VOC) from portable fuel containers, consumer products, architectural and industrial (AIM) coatings, adhesives and sealants, and asphalt paving operations within the Northern Virginia and Fredericksburg VOC Emissions Control Areas. The SIP revision also includes new and revised documents incorporated by reference into the Virginia regulations (9VAC5-20-21 – Documents Incorporated by Reference) in order to support the new and revised regulations. This action is being taken under the Clean Air Act (CAA).

**DATES:** Written comments must be received on or before [insert date 30 days from date of publication].

**ADDRESSES:** Submit your comments, identified by Docket ID Number **EPA-R03-OAR-2011-0730** by one of the following methods:

A. [www.regulations.gov](http://www.regulations.gov). Follow the on-line instructions for submitting comments.

B. E-mail: [fernandez.cristina@epa.gov](mailto:fernandez.cristina@epa.gov)

C. Mail: **EPA-R03-OAR-2011-0730**, Cristina Fernandez, Associate Director, Office of Air Program Planning, Mailcode 3AP30, U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103.

D. Hand Delivery: At the previously-listed EPA Region III address. Such deliveries are only accepted during the Docket's normal hours of operation, and special arrangements should be made for deliveries of boxed information.

**Instructions:** Direct your comments to Docket ID Number **EPA-R03-OAR-2011-0730**. EPA's policy is that all comments received will be included in the public docket without change, and may be made available online at [www.regulations.gov](http://www.regulations.gov), including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through [www.regulations.gov](http://www.regulations.gov) or e-mail. The [www.regulations.gov](http://www.regulations.gov) website is an "anonymous access" system, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an e-mail comment directly to EPA without going through [www.regulations.gov](http://www.regulations.gov), your e-mail address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD-ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification,

EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses.

***Docket:*** All documents in the electronic docket are listed in the [www.regulations.gov](http://www.regulations.gov) index.

Although listed in the index, some information is not publicly available, i.e., CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form.

Publicly available docket materials are available either electronically in [www.regulations.gov](http://www.regulations.gov) or in hard copy during normal business hours at the Air Protection Division, U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103. Copies of the State submittal are available at the Virginia Department of Environmental Quality, 629 East Main Street, Richmond, Virginia 23219.

**FOR FURTHER INFORMATION CONTACT:** Gregory Becoat, (215) 814-2036, or by e-mail at [becoat.gregory@epa.gov](mailto:becoat.gregory@epa.gov).

## **SUPPLEMENTARY INFORMATION:**

### **I. Background**

On March 18, 2010, the Virginia Department of Environmental Quality (VADEQ) submitted a revision to the Virginia SIP. The SIP revision consists of new and revised standards for the control of VOCs from certain types of consumer and commercial products in the Northern Virginia and Fredericksburg VOC Emissions Control Areas. The SIP revision also includes new and revised documents incorporated by reference into the Virginia regulations to support the new

and revised regulations. The regulations will control emissions of VOCs, which will reduce the formation of ozone, and thereby protect public health and welfare.

## **II. Summary of SIP Revision**

The SIP revision amends Chapter 9VAC5-20-21– Documents Incorporated by Reference, in order to make administrative changes for clarity, style, format, and renumbering. The revision adds sections to 9VAC5-20-21 in order to incorporate by reference into the Virginia regulations the new and revised regulations. The Commonwealth of Virginia established a new chapter, 9VAC5-45 - Consumer and Commercial Products (Chapter 45) in order to control VOC emissions from various consumer and commercial products within the Northern Virginia and Fredericksburg VOC Emissions Control Areas. The new chapter consists of general requirements that pertain to regulating consumer and commercial products, as well as, VOC content and emission limits for consumer and commercial products. Chapter 45 also contains the control technology, testing, monitoring, administrative, recordkeeping, and reporting requirements necessary to determine compliance with each of the applicable standards. This SIP revision establishes requirements to specify applicability to any product, owner, or other person subject to the provisions of Chapter 45, establish compliance with the standards in Chapter 45, establish emission tests for operations and products subject to the standards subject to the provisions of Chapter 45, specify monitoring requirements, and specify notification, records, and reporting requirements.

Chapter 45 establishes Article 1 and Article 2 in order to implement design, performance, and labeling standards for portable fuel containers and spouts before and after August 1, 2010 and to

prohibit owners from manufacturing, distributing, and selling noncompliant products. The portable fuel containers and spouts requirements in this SIP revision establish (1) applicability to any person who sells, supplies, offers for sale, or manufactures for sale portable fuel containers and spouts within the Northern Virginia and Fredericksburg VOC Emissions Control Areas; (2) specify exemptions for any portable fuel container or spout manufactured, sold, supplied, or offered for sale within and used outside the Northern Virginia and Fredericksburg VOC Emissions Control Areas; (3) add definitions and terms; (4) specify performance standards for VOCs; (5) specify administrative requirements; (6) specify compliance procedures; (7) establish compliance schedules; (8) specify test methods and procedures; (9) specify monitoring applicability; and (10) specify notification, records, and reporting requirements. In addition, the SIP revision specifies certification and innovative products procedures for portable fuel containers and spouts manufactured after August 1, 2010.

The Commonwealth of Virginia establishes Article 3 and Article 4 in Chapter 45 in order to implement VOC content standards for certain individual consumer product categories before and after August 1, 2010 and to prohibit owners from manufacturing, distributing, advertising, or selling noncompliant products. This SIP revision adds regulations that establish (1) applicability to any consumer product that contains VOCs within the Northern Virginia and Fredericksburg VOC Emissions Control Areas; (2) specifies exemptions; (3) adds definitions and terms; (4) sets applicability to any person who sells, supplies, offers for sale, or manufactures consumer products that contains VOCs in excess of the specified limits; (5) specifies VOC content limits in percent VOCs by weight for consumer products with a specified compliance date; (6) establishes applicability for alternative control plan (ACP) for consumer products and criteria for innovative

products exemption and requirements for waiver requests; and (7) specifies innovative products procedures. In addition, the regulations specify administrative requirements, compliance procedures, compliance schedules, test methods and procedures, monitoring applicability, and notification, records, and reporting requirements.

Chapter 45 adds Article 5 in order to control VOC emissions from AIM, implement VOC content standards, and prohibit owners from manufacturing, distributing, selling, and using noncompliant products. This SIP revision adds regulations that establish (1) applicability to any owner or person who supplies, sells, offers for sale, or manufactures any architectural coating within the Northern Virginia and Fredericksburg VOC Emissions Control Areas; (2) specifies exemptions; (3) adds definitions and terms; (4) specifies that no person or owner shall manufacture, blend, or repackage for sale, supply, sell, or offer for sale, or solicit for application or apply any architectural coating with VOC content in excess of the applicable limits; (5) establishes that the most restrictive VOC content limit shall apply to any coating that meets the definition of or is recommended for use for more than one of the coating categories specified; and (6) establishes requirements for various architectural and industrial maintenance coating types. In addition, the regulations specify administrative requirements, compliance procedures, compliance schedules, test methods and procedures, monitoring applicability, and notification, records, and reporting requirements.

This SIP revision also establishes Article 6 in Chapter 45 in order to control VOC emissions from adhesives, adhesive primers, sealants, and sealant primers, implement VOC content limits, and prohibit owners from manufacturing, distributing, selling, or applying noncompliant

products based on a model rule. The Ozone Transport Commission (OTC) states developed a model rule “OTC Model Rule For Adhesives and Sealants” dated 2006 which was based on the 1998 California Air Resources Board (CARB) reasonably available control technology (RACT) determination. This RACT determination applied to both the manufacture and use of adhesives, sealants, adhesive primers, or sealant primers, in both industrial and manufacturing facilities and in the field. California Air Districts used this determination to develop regulations for this category. EPA addressed this source category with a Control Techniques Guideline (CTG) document for Miscellaneous Industrial Adhesives dated September 2008. This CTG was developed in response to section 183(e) of the CAA requirement for EPA to study and regulate consumer and commercial products, which is included in EPA’s Report to Congress, “Study of Volatile Organic Compound Emissions from Consumer and Commercial Products – Comprehensive Emissions Inventory.” The miscellaneous industrial adhesives category was limited to adhesives and adhesive primers used in industrial and manufacturing operations and did not include products applied in the field. Therefore, the OTC model rule and state efforts in developing individual regulations preceded EPA’s CTG for this source category and were broader in applicability.

The adhesives and sealants requirements in this SIP revision set (1) applicability to any owner or person who supplies, sells, offers for sale, manufactures, uses, applies for compensation, solicits the use of, requires the use of, or specifies the application of, any adhesive, sealant, adhesive primer, or sealant primer that contains VOCs within the Northern Virginia and Fredericksburg VOC Emissions Control Areas; (2) set exemptions for specific products and compounds of adhesives, sealants, adhesive primers, or sealant primers; (3) add definitions and terms; (4)

specify that no person or owner shall sell, supply, or offer for sale, or manufactured for sale any adhesive, sealant, adhesive primer or sealant primer with VOC content in excess of the limits specified; (5) specify requirements for owners or operators of a facility that uses or applies a surface preparation solvent or cleanup solvent or removes an adhesive, sealant, adhesive primer, sealant primer from the parts of spray application equipment; (6) specify requirements for proper storage and disposal, work practices, surface preparation and cleanup solvent composition; (7) provide for an alternative add-on control system requirement of at least 85 percent overall control efficiency (capture and destruction), by weight; (8) specify standards for visible emissions; specify administrative requirements; (9) specify compliance procedures and compliance schedules; (10) specify test methods and procedures; (11) specify monitoring applicability; (12) specify notification, records, and reporting requirements; (13) specify registration provisions; and (14) specify facility and control equipment maintenance or malfunction provisions.

Chapter 45 also adds Article 7 in order to control VOC emissions from asphalt paving operations, which prescribes the use of emulsified asphalt coatings except for the purpose of coating residential driveways and prohibit the mixing, storage, and application of noncompliant products. The SIP revision adds regulations that (1) establish applicability to any owner or person who manufactures, mixes, stores, uses, or applies any liquefied asphalt for paving operations within the Northern Virginia and Fredericksburg VOC Emissions Control Areas; (2) add definitions and terms; (3) specify no owner or person shall cause or permit the manufacture, mixing, storage, use, or application of liquefied asphalt for paving operations unless it is emulsified; specify exemptions; (4) specify standards for visible emissions; and (5) specify



standards for fugitive dust/emissions. In addition, the regulations specify compliance procedures, test methods and procedures, monitoring provisions, and notification, records, and reporting requirements.

A detailed summary of EPA's review of and rationale for proposing to approve this SIP revision may be found in the Technical Support Document (TSD) for this action which is available online at [www.regulations.gov](http://www.regulations.gov), Docket number **EPA-R03-OAR-2011-0730**.

### **III. General Information Pertaining to SIP Submittals From the Commonwealth of Virginia**

In 1995, Virginia adopted legislation that provides, subject to certain conditions, for an environmental assessment (audit) "privilege" for voluntary compliance evaluations performed by a regulated entity. The legislation further addresses the relative burden of proof for parties either asserting the privilege or seeking disclosure of documents for which the privilege is claimed.

Virginia's legislation also provides, subject to certain conditions, for a penalty waiver for violations of environmental laws when a regulated entity discovers such violations pursuant to a voluntary compliance evaluation and voluntarily discloses such violations to the Commonwealth and takes prompt and appropriate measures to remedy the violations. Virginia's Voluntary Environmental Assessment Privilege Law, Va. Code Sec. 10.1-1198, provides a privilege that protects from disclosure documents and information about the content of those documents that are the product of a voluntary environmental assessment. The Privilege Law does not extend to documents or information (1) that are generated or developed before the commencement of a voluntary environmental assessment; (2) that are prepared independently of the assessment

process; (3) that demonstrate a clear, imminent and substantial danger to the public health or environment; or (4) that are required by law.

On January 12, 1998, the Commonwealth of Virginia Office of the Attorney General provided a legal opinion that states that the Privilege Law, Va. Code Sec. 10.1-1198, precludes granting a privilege to documents and information “required by law,” including documents and information “required by Federal law to maintain program delegation, authorization or approval,” since Virginia must “enforce Federally authorized environmental programs in a manner that is no less stringent than their Federal counterparts. . . .” The opinion concludes that “[r]egarding § 10.1-1198, therefore, documents or other information needed for civil or criminal enforcement under one of these programs could not be privileged because such documents and information are essential to pursuing enforcement in a manner required by Federal law to maintain program delegation, authorization or approval.”

Virginia’s Immunity law, Va. Code Sec. 10.1-1199, provides that “[t]o the extent consistent with requirements imposed by Federal law,” any person making a voluntary disclosure of information to a state agency regarding a violation of an environmental statute, regulation, permit, or administrative order is granted immunity from administrative or civil penalty. The Attorney General's January 12, 1998 opinion states that the quoted language renders this statute inapplicable to enforcement of any Federally authorized programs, since “no immunity could be afforded from administrative, civil, or criminal penalties because granting such immunity would not be consistent with Federal law, which is one of the criteria for immunity.”

Therefore, EPA has determined that Virginia's Privilege and Immunity statutes will not preclude the Commonwealth from enforcing its program consistent with the Federal requirements. In any event, because EPA has also determined that a state audit privilege and immunity law can affect only state enforcement and cannot have any impact on Federal enforcement authorities, EPA may at any time invoke its authority under the CAA, including, for example, sections 113, 167, 205, 211 or 213, to enforce the requirements or prohibitions of the state plan, independently of any state enforcement effort. In addition, citizen enforcement under section 304 of the CAA is likewise unaffected by this, or any, state audit privilege or immunity law.

#### **IV. Proposed Action**

EPA is proposing to approve the Virginia SIP revision adding Chapter 45 – Consumer and Commercial Products that consists of new and revised standards for the control of VOCs from portable fuel containers, consumer products, architectural and industrial coatings, adhesives and sealants, and asphalt paving operations in the Northern Virginia and Fredericksburg VOC Emissions Control Areas. EPA is also proposing to approve the Virginia SIP revision that includes new and revised documents incorporated by reference into the Virginia regulations (9VAC5-20-21 – Documents Incorporated by Reference). EPA is soliciting public comments on the issues discussed in this document. These comments will be considered before taking final action.

#### **V. Statutory and Executive Order Reviews**

Under the CAA, the Administrator is required to approve a SIP submission that complies with the provisions of the CAA and applicable Federal regulations. 42 U.S.C. 7410(k); 40 CFR

52.02(a). Thus, in reviewing SIP submissions, EPA's role is to approve state choices, provided that they meet the criteria of the CAA. Accordingly, this action merely proposes to approve state law as meeting Federal requirements and does not impose additional requirements beyond those imposed by state law. For that reason, this proposed action:

- is not a “significant regulatory action” subject to review by the Office of Management and Budget under Executive Order 12866 (58 FR 51735, October 4, 1993);
- does not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 et seq.);
- is certified as not having a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 et seq.);
- does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Public Law 104-4);
- does not have Federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);
- is not an economically significant regulatory action based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);
- is not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001);
- is not subject to requirements of Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) because application of those requirements would be inconsistent with the CAA; and

- does not provide EPA with the discretionary authority to address, as appropriate, disproportionate human health or environmental effects, using practicable and legally permissible methods, under Executive Order 12898 (59 FR 7629, February 16, 1994).

In addition, this proposed rule, pertaining to Virginia's control of VOCs from commercial and consumer products does not have tribal implications as specified by Executive Order 13175 (65 FR 67249, November 9, 2000), because the SIP is not approved to apply in Indian country located in the state, and EPA notes that it will not impose substantial direct costs on tribal governments or preempt tribal law.

#### **List of Subjects in 40 CFR Part 52**

Environmental protection, Air pollution control, Ozone, Reporting and recordkeeping requirements, Volatile organic compounds.

**Authority:** 42 U.S.C. 7401 et seq.

Dated: October 25, 2011

W. C. Early, Acting  
Regional Administrator,  
Region III.

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